IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 624 of 1999

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SAIYED GULAMHUSEN RAJANALI

Appearance:

1. Appeal from Order No. 624 of 1999

Shri K.C.Shah, A.G.P. for Petitioners No. 1-3

MR SL CHAUDHARI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/11/2001

ORAL JUDGEMENT

1. Against the impugned order dated 19.5.1999 passed by the learned Civil Judge (SD), Veraval, below Ex.5 in Special Civil Suit No.28 of 1996, the appellant - State

of Gujarat and others have filed this Appeal from Order.

2. The learned trial Judge by his impugned order allowed the Application Ex.5 and granted injunction in terms of Para : 7 of the Application whereby the present appellants were restrained from interfering with the possession of the land bearing Survey Nos.91, 92 and 93.

3. Learned A.G.P. Shri Shah vehemently submitted that when in a Suit filed by other person the Gujarat Revenue Tribunal remanded the matter then no injunction could have been granted in favour of the respondent plaintiff who was not at all concerned with the matter. It is a different matter that the matter is remanded by the Gujarat Revenue Tribunal. One has to see who was in possession at the time of filing of the Suit. The learned trial Judge in his impugned order clearly found that as per the entries made in "Jungle Book" the plaintiff was in possession of the land in question as "Barkhalidar" since long.

4. Under the circumstances even if it is assumed that they have no right or title over the land then also without due process of law they cannot be evicted from the land in question if it is found that they were in possession of the land for more than 12 years.

5. Grant of injunction is a discretion and when the trial Court exercised the discretion in favour of the plaintiff then this Court cannot interfere with such discretionary powers in Appeal.

6. In view of the above discussion this Appeal fails and is dismissed. However, the learned trial Judge is directed to decide the main Special Civil Suit No.28 of 1996 as early as possible and not later than 31st December, 2002. The parties shall fully cooperate with the final disposal of the Suit. It is made clear that while deciding the Suit the learned trial Judge shall not be influenced with the observation made by the learned trial Judge while deciding the Application Ex.5. He shall decide the Suit on the basis of the evidence led before him. With this observation this Appeal is dismissed.

sd/-

Date : November 08, 2001 (B.J.Shethna, J.)

sas